

# **Exhibit 5**

**From:** [Jeff Gould](#)  
**To:** [Leiden, Diana Hughes](#); [Kerry Mustico](#)  
**Cc:** [Anderson, Sean R.](#); [Golinveaux, Jennifer A.](#)  
**Subject:** Re: Sony v. Cox - third-party depositions  
**Date:** Monday, April 29, 2019 06:04:12

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Diana – the RIAA is available for a deposition on Wednesday, May 29 in Washington, D.C. Though the RIAA has no obligation under the rules to identify the witness, as a courtesy I can inform you that Steve Marks will be the witness.

Regards,  
Jeff

Jeffrey M. Gould  
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[jeff@oandzlaw.com](mailto:jeff@oandzlaw.com)

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**From:** "Leiden, Diana Hughes" <DHLeiden@winston.com>  
**Date:** Sunday, April 28, 2019 at 3:59 PM  
**To:** Jeff Gould <Jeff@oandzlaw.com>, Kerry Mustico <Kerry@oandzlaw.com>  
**Cc:** "Anderson, Sean R." <sranderson@winston.com>, "Golinveaux, Jennifer A." <JGolinveaux@winston.com>  
**Subject:** RE: Sony v. Cox - third-party depositions

Jeff,

I haven't heard from you since April 22 about the RIAA deposition. You said that you would have information last week about the deponents and dates. Please provide no later than tomorrow.

Diana

**Diana Hughes Leiden**

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**From:** Leiden, Diana Hughes  
**Sent:** Wednesday, April 24, 2019 3:16 PM  
**To:** 'Jeff Gould' <Jeff@oandzlaw.com>; 'Kerry Mustico' <Kerry@oandzlaw.com>  
**Cc:** Anderson, Sean R. <SRanderson@winston.com>; Golinveaux, Jennifer A.

<JGolinveaux@winston.com>

**Subject:** RE: Sony v. Cox - third-party depositions

Jeff,

Please provide an update on the RIAA deposition. Thank you.

Diana

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**From:** Leiden, Diana Hughes

**Sent:** Monday, April 22, 2019 8:01 PM

**To:** 'Jeff Gould' <[Jeff@oandzlaw.com](mailto:Jeff@oandzlaw.com)>; Kerry Mustico <[Kerry@oandzlaw.com](mailto:Kerry@oandzlaw.com)>

**Cc:** Anderson, Sean R. <[SRanderson@winston.com](mailto:SRanderson@winston.com)>; Golinveaux, Jennifer A. <[JGolinveaux@winston.com](mailto:JGolinveaux@winston.com)>

**Subject:** RE: Sony v. Cox - third-party depositions

Jeff,

We look forward to hearing from you this week on the topics and designees, including a confirming regarding Ms. Scheckler.

Diana

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**From:** Jeff Gould <[Jeff@oandzlaw.com](mailto:Jeff@oandzlaw.com)>

**Sent:** Monday, April 22, 2019 7:43 PM

**To:** Leiden, Diana Hughes <[DHLeiden@winston.com](mailto:DHLeiden@winston.com)>; Kerry Mustico <[Kerry@oandzlaw.com](mailto:Kerry@oandzlaw.com)>

**Cc:** Anderson, Sean R. <[SRanderson@winston.com](mailto:SRanderson@winston.com)>; Golinveaux, Jennifer A. <[JGolinveaux@winston.com](mailto:JGolinveaux@winston.com)>

**Subject:** Re: Sony v. Cox - third-party depositions

Diana – The RIAA has had Cox's deposition subpoena for four business days bookending a holiday weekend. Various folks at the RIAA have been out of the office and they are still assessing available dates and corporate designees. I should have additional information this week. In the meantime, I can confirm that April 30 does not work.

Regards,  
Jeff

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[jeff@oandzlaw.com](mailto:jeff@oandzlaw.com)

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**From:** "Leiden, Diana Hughes" <[DHLeiden@winston.com](mailto:DHLeiden@winston.com)>  
**Date:** Monday, April 22, 2019 at 9:44 PM  
**To:** Kerry Mustico <[Kerry@oandzlaw.com](mailto:Kerry@oandzlaw.com)>, Jeff Gould <[Jeff@oandzlaw.com](mailto:Jeff@oandzlaw.com)>  
**Cc:** "Anderson, Sean R." <[sranderson@winston.com](mailto:sranderson@winston.com)>, "Golinveaux, Jennifer A." <[JGolinveaux@winston.com](mailto:JGolinveaux@winston.com)>  
**Subject:** RE: Sony v. Cox - third-party depositions

Jeff,

Please respond on the RIAA deposition. We need to know with witnesses will be designated for which topics, and the date the deposition will occur. It has already been a week since we served the notice. Given that you have not provided any information on the topics or witnesses, we will assume we are not going forward on April 30. Please also specifically confirm that Ms. Scheckler will be the 30(b)(6) designee on at least the topics I mentioned in my prior email.

Diana

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**From:** Kerry Mustico <[Kerry@oandzlaw.com](mailto:Kerry@oandzlaw.com)>  
**Sent:** Monday, April 22, 2019 1:10 PM  
**To:** Leiden, Diana Hughes <[DHLeiden@winston.com](mailto:DHLeiden@winston.com)>; Jeff Gould <[Jeff@oandzlaw.com](mailto:Jeff@oandzlaw.com)>  
**Cc:** Anderson, Sean R. <[SRanderson@winston.com](mailto:SRanderson@winston.com)>; Golinveaux, Jennifer A. <[JGolinveaux@winston.com](mailto:JGolinveaux@winston.com)>

**Subject:** Re: Sony v. Cox - third-party depositions

I will check with Ms. Lesser on alternate dates and get back to you. Jeff is the one who can respond re RIAA, but he is on a plane at the moment. He'll get back to you as soon as he can.

Kerry M. Mustico

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**From:** "Leiden, Diana Hughes" <[DHLeiden@winston.com](mailto:DHLeiden@winston.com)>

**Date:** Monday, April 22, 2019 at 3:48 PM

**To:** Kerry Mustico <[Kerry@oandzlaw.com](mailto:Kerry@oandzlaw.com)>, Jeff Gould <[Jeff@oandzlaw.com](mailto:Jeff@oandzlaw.com)>

**Cc:** "Anderson, Sean R." <[sranderson@winston.com](mailto:sranderson@winston.com)>, "Golinveaux, Jennifer A." <[JGolinveaux@winston.com](mailto:JGolinveaux@winston.com)>

**Subject:** RE: Sony v. Cox - third-party depositions

Kerry,

We will not go forward with Ms. Lesser's deposition on April 24. Please provide alternative dates in May (or June, if necessary, prior to the fact discovery cut-off date) as soon as possible.

Can you or Jeff please also respond on the RIAA deposition as soon as possible.

Diana

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**From:** Kerry Mustico <[Kerry@oandzlaw.com](mailto:Kerry@oandzlaw.com)>

**Sent:** Monday, April 22, 2019 11:56 AM

**To:** Leiden, Diana Hughes <[DHLeiden@winston.com](mailto:DHLeiden@winston.com)>; Jeff Gould <[Jeff@oandzlaw.com](mailto:Jeff@oandzlaw.com)>  
**Cc:** Anderson, Sean R. <[SRanderson@winston.com](mailto:SRanderson@winston.com)>; Golinveaux, Jennifer A. <[JGolinveaux@winston.com](mailto:JGolinveaux@winston.com)>  
**Subject:** Re: Sony v. Cox - third-party depositions

Diana,

We can reschedule Ms. Lesser's deposition, but May is extremely busy and will be difficult to schedule. If the deposition is deferred, we may not be able to reschedule until June. If we don't hear otherwise from you by the end of the day, we will assume that Ms. Lesser's deposition is not going forward on Wednesday.

Kerry

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**From:** "Leiden, Diana Hughes" <[DHLeiden@winston.com](mailto:DHLeiden@winston.com)>  
**Date:** Monday, April 22, 2019 at 2:07 PM  
**To:** Jeff Gould <[Jeff@oandzlaw.com](mailto:Jeff@oandzlaw.com)>  
**Cc:** "Anderson, Sean R." <[sranderson@winston.com](mailto:sranderson@winston.com)>, "Golinveaux, Jennifer A." <[JGolinveaux@winston.com](mailto:JGolinveaux@winston.com)>, Kerry Mustico <[kerry@oandzlaw.com](mailto:kerry@oandzlaw.com)>  
**Subject:** RE: Sony v. Cox - third-party depositions

Jeff,

In light of Kerry's email last week indicating that Ms. Lesser has not located additional relevant documents, we would like to reschedule that deposition for the week of May 6. Please let us know her availability that week as soon as possible.

For Stroz Friedberg, as you know the law firm of Withers Bergman is handling and you should coordinate with them on logistics. However, I understand that the deposition will not be going forward on April 24.

The May 1 deposition date for Audible Magic has not yet been confirmed but we will let you know as soon as it is. Same for MarkMonitor – we will let you know as soon as the deposition date is confirmed.

Additionally, the RIAA deposition was noticed for April 30. Please confirm that date or propose other dates, and confirm that Ms. Sheckler will be the 30(b)(6) designee for the RIAA deposition on at least Topics 6 and 7.

Regards,  
Diana

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**From:** Jeff Gould <[Jeff@oandzlaw.com](mailto:Jeff@oandzlaw.com)>  
**Sent:** Monday, April 22, 2019 8:10 AM  
**To:** Leiden, Diana Hughes <[DHLeiden@winston.com](mailto:DHLeiden@winston.com)>; Anderson, Sean R. <[SRanderson@winston.com](mailto:SRanderson@winston.com)>  
**Cc:** Anderson, Sean R. <[SRanderson@winston.com](mailto:SRanderson@winston.com)>; Golinveaux, Jennifer A. <[JGolinveaux@winston.com](mailto:JGolinveaux@winston.com)>; Kerry Mustico <[Kerry@oandzlaw.com](mailto:Kerry@oandzlaw.com)>  
**Subject:** Re: Sony v. Cox - third-party depositions

Diana - Please let us know today if Cox is going forward with the Lesser deposition on 4/24; whether Cox has scheduled a date/location for a Stroz deposition and if that's going forward; and whether Cox has scheduled a date/location for an Audible Magic deposition and if that's going forward. Given that some of these may be in the next couple days, we would appreciate a prompt response today. I understand the MarkMonitor deposition has not yet been scheduled but please let me know if there's an update on that.

Thanks,  
Jeff

Jeffrey M. Gould

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**From:** Jeff Gould <[Jeff@oandzlaw.com](mailto:Jeff@oandzlaw.com)>

**Date:** Friday, April 19, 2019 at 3:25 PM

**To:** "Leiden, Diana Hughes" <[DHLeiden@winston.com](mailto:DHLeiden@winston.com)>

**Cc:** "Anderson, Sean R." <[sranderson@winston.com](mailto:sranderson@winston.com)>, "Golinveaux, Jennifer A." <[JGolinveaux@winston.com](mailto:JGolinveaux@winston.com)>, Kerry Mustico <[Kerry@oandzlaw.com](mailto:Kerry@oandzlaw.com)>

**Subject:** Re: Sony v. Cox - third-party depositions

Diana,

Cox sent the RIAA deposition subpoena [at 9:30 pm EST](#) Tuesday night identifying 28 broad topics and noticing that third-party deposition for less than two weeks out. The RIAA is still assessing the subpoena, including the nature and scope of topics requested, who it will designate to testify on those 28 topics, and its scheduling availability. Nevertheless, I can confirm in the meantime that Ms. Sheckler's files were searched.

As for the remainder of your email, we disagree with your characterizations, including that Mr. Monson's and Mr. Nielson's depositions are less than two third-party depositions, and your assertions regarding Plaintiffs' initial disclosure and Audible Magic.

Nevertheless, in an effort to resolve the issue and without waiving Plaintiffs' objections, Plaintiffs will consent to Cox taking one additional non-party, non-expert deposition beyond the five permitted by the Court's scheduling order, provided that Cox agrees Plaintiffs may do the same.

Regards,  
Jeff

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On Apr 18, 2019, at 9:16 AM, Leiden, Diana Hughes <[DHLeiden@winston.com](mailto:DHLeiden@winston.com)> wrote:



Jeff,

Please confirm that Ms. Sheckler will be the 30(b)(6) designee for the RIAA deposition on at least Topics 6 and 7, and that her files were searched for responsive documents, given that she was the primary individual at the RIAA communicating with Cox regarding the number of copyright infringement notices Cox accepted from the RIAA during the relevant timeframe.

We disagree that Cox's single additional non-party, non-expert deposition would complicate the schedule, particularly given that the depositions of Dr. Monson and Dr. Nielson were each a half-day (and would have been the 30(b)(6) witnesses for a single Harbor Labs deposition if they were current employees).

Furthermore, Cox did not learn until recently that Audible Magic was a relevant witness. Audible Magic was not disclosed by Plaintiffs on their initial disclosures despite the fact that their fingerprinting technology was a key component of the MarkMonitor system that was used to detect and generate notices relating to every alleged infringement in this case. Cox did not learn of Audible Magic's key involvement until reviewing documents produced by MarkMonitor and the RIAA. And, as you know, Dr. Monson testified on Tuesday that: "If Audible Magic doesn't work, then MarkMonitor doesn't work for audio ... my understanding was that ... [MarkMonitor] simply relied wholly on this system for audio." (RT 104:5-15).

For these reasons, Cox requests that Plaintiffs stipulate that Cox may take one additional non-party, non-expert deposition. Please let us know by close of business today whether Plaintiffs will so stipulate, so that Cox may raise this with the Court as necessary. Cox reserves all rights with respect to Plaintiffs' failure to designate Audible Magic as a relevant witness on their initial disclosures.

Regards,  
Diana

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<image001.jpg>

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**From:** Jeff Gould <[Jeff@oandzlaw.com](mailto:Jeff@oandzlaw.com)>

**Sent:** Wednesday, April 17, 2019 9:03 AM

**To:** Leiden, Diana Hughes <[DHLeiden@winston.com](mailto:DHLeiden@winston.com)>; Anderson, Sean R.

<[SRanderson@winston.com](mailto:SRanderson@winston.com)>; Golinveaux, Jennifer A. <[JGolinveaux@winston.com](mailto:JGolinveaux@winston.com)>

**Cc:** Kerry Mustico <[Kerry@oandzlaw.com](mailto:Kerry@oandzlaw.com)>

**Subject:** Sony v. Cox - third-party depositions

Diana/Sean – Pursuant to the Court’s scheduling order, Cox is limited to five non-party, non-expert depositions absent leave of court. (ECF No. 52.) Cox has already taken two (Monson and Nielsen), and has served deposition subpoenas for six more (Stroz, Lesser, MarkMonitor, Audible Magic, RIAA, Vicky Sheckler). Even apart from the Court’s limitation, scheduling these additional depositions would complicate an already challenging schedule. Please let us know promptly which 3 of the remaining non-party, non-expert depositions Cox intends to take so we can plan accordingly.

Thanks,  
Jeff

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